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Unilateral Do-Not-Resuscitate Orders

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Many states have enacted comprehensive laws about the creation of advance directives, the need for their recognition by healthcare providers, and how advance directives are to shape a patient's last days. Many of these laws address not only living wills (called *declarations* in Louisiana) but also interhospital physician orders for life-sustaining treatment, such as the Louisiana Physician Orders for Scope of Treatment (LaPOST).[1] But what of traditional do-not-resuscitate (DNR) orders? Do laws govern the execution of DNR orders, particularly in challenging circumstances, such as when no evidence exists to establish the patient's wishes, and the physician's medical opinion of the value of continued care is in disaccord with the family's desires? The answer is, generally, no. However, the ethical principles and analogous laws discussed below may be useful in directing physicians and other providers in the implementation of DNR orders.

A DNR order calls for the withholding of life-sustaining, resuscitative treatment in the event of cardiac or respiratory arrest. Ethically speaking, the general consensus is that there is no distinction between withdrawing and withholding care.[2] Pronouncements of the ethical equivalence of withdrawing and withholding care commonly emphasize, however, the psychological and social differences between the two.[3] Certainly, these differences may play a part in physicians' communications with and recommendations to patients and families and in the patients' or families' end-of-life choices.

But in legal terms, there is no ambivalence whatsoever as to the correspondence between withdrawing and withholding care as concepts that play a role in end-of-life decision-making. The United States Supreme Court held as much in the seminal right-to-die decision, *Cruzan v Director, Missouri Department of Health*.[4] Moreover, the laws governing advance directives and end-of-life choices reject the categorical differentiation between "actively hastening death by terminating treatment and passively allowing a person to die of disease."[5] Louisiana's statutes on advance directives employ these concepts in tandem and prescribe their uniform treatment in practice.

Decision-making surrounding a DNR order and the withholding of cardiopulmonary resuscitation (CPR) is as rife with considerations of patient autonomy and beneficence/maleficence as the choices involving the discontinuance of a ventilator. Physicians are not ethically obligated to deliver care that, in their best professional judgment, will not have a reasonable chance of benefiting their patients.[6] They certainly should not provide medical interventions that cause harm to the patient. These ethical principles are not commonly addressed directly in the law. Two notable exceptions are actions by the state legislatures in Texas and Louisiana.

In 1999, the Texas legislature promulgated the Texas Advance Directives Act that provided, in part, an extrajudicial dispute resolution process for hospitals and patients/families when they come to a standstill on end-of-life decisions.[7] An example of such a dispute is when the attending physician has determined that life-sustaining treatment is medically inappropriate in the face of an advance directive or family opinion stating otherwise. The Texas statute mandates that the physician's determination must be reviewed by an ethics or medical committee at the hospital. The patient/family is entitled to attend the meeting and receive a written explanation of the committee's decision. If the committee agrees that further care, including CPR, would cause harms without benefits, the patient or patient's family has 10 days after receiving the written decision to find another facility to which to transfer the patient. The physician and hospital are not obligated to provide life-sustaining treatment after the tenth day.

At this time, Louisiana has no such legal process nor, it appears, does any state other than Texas. However, the Louisiana legislature has made explicit expressions of legislative purpose and intent on futility as it relates to the state's advance directive and LaPOST laws. In both statutory schemes, separate provisions state as follows:

> [N]othing in this Subpart shall be construed to be the exclusive means by which life-sustaining procedures may be withheld or withdrawn, nor shall this Subpart be construed to require the application of medically inappropriate treatment or life-sustaining procedures to any patient or to interfere with medical judgment with respect to the application of medical treatment or life-sustaining procedures.[8,9]

In light of the foregoing, what should an attending physician do when, in his or her professional judgment, any clinical treatment other than comfort care will be ineffective or harmful to a patient, but the family's wishes, in the absence of an advance directive, are in support of "doing everything"? Or what if the patient has not left an advance directive, and no family can be found? In such a situation, a DNR order, at its core, is simply a written distillation of the physician's medical decision that CPR/advanced cardiac life support will cause harm rather than benefits to the patient. No civil laws specifically govern this situation. Such an intrahospital order is not a legal document with a required structure or talismanic language. Intrahospital DNR orders are primarily governed by hospital policy.

As such, there is generally no legal guidance, indeed not in Louisiana, as to the form or content of such a DNR order

or the process by which it is executed. However, a physician can act to validate his or her opinion on the appropriateness of the DNR order by obtaining the opinion of another physician, and, if the second physician is in agreement, obtaining the latter's signature on the DNR order as well as on an explanatory progress note that is placed in the patient's medical record. This 2-physician signoff process will serve to confirm the medical decision-making surrounding the DNR order and help protect the attending physician from claims of unsoundness or arbitrariness of decision. This 2-physician signature is consistent with Louisiana laws on declarations (living wills) and on the certification of a ''qualified patient'' as a patient diagnosed and certified by 2 physicians as having a terminal and irreversible condition and, thus, susceptible to the activation of a living will. Although a second signature is not legally required on the type of DNR order described above, it is a prudent layer of protection for the physician whose clinical conclusion on the value of resuscitative attempts must be made in a vacuum.

REFERENCES

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